IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY NINTH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE B. SUDERSHAN REDDY

and
THE HON'BLE MR JUSTICE T.CH.SURYA RAO

WRIT PETITION NO : 20295 of 2004

Between:

1. Shaik Mahaboob, S/o Shaik Nawab,
aged about 42 years, Occ: Business,
R/o H.No. 1-14-59, Indira Nagar Colony,
Kamareddy Mandal, Nizamabad District.
2. Sisodiya Kamal Chand Jain, S/o Jeevan Chand Jain,
aged about 39 years, Occ: Business, R/o H.No.2-4-8,
Bharat Road, Kamareddy Mandal, Nizamabad District-503111.
3. Muthyal Surender Reddy, S/o Veera Reddy,
aged about 42 years, Occ:Agriculture,

R/o Venkatapur Village, Siddipet Mandal, Medak District.
4. Nangunuri Krishna Murthy, S/o Late Venkatesham,
aged about 49 years, Occ:Business, R/o Gandhi Gunj,
Kamareddy, Proprietor of M/s Vijayalaxmi Trading Co.,
Paddy & Rice Mill, Kamareddy, Nizamabad District.

..... PETITIONERS

AND

1 The Sub-Registrar, Kamareddy, Nizamabad District.
2 The Commercial Tax Officer, Kamareddy, Nizamabad District.

....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ, Order or Direction more particularly one in the nature of Writ of

Mandamus declaring the action of the 1st and 2nd Respondents in issuing impugned memo No. 281/2004, dated
2-11-2004 and impugned letter vide G.I.No. A1/1142/2004 dated 26-10-2004 respectively as arbitrary, illegal and violative of Article 14 and 21 of Constitution of India, consequently set aside the impugned letter of the 2nd Respondent vide G.I.No. A1/1142/2004 dated 26-10-2004 and the consequential impugned memo No. 281/2004 dated 2-11-2004 issued by the 1st Respondent.

Counsel for the Petitioners: MR.D.JAGAN MOHAN REDDY

Counsel for the Respondent No.1: GP FOR REVENUE

Counsel for the Respondent No.2: SPECIAL STANDING COUNSEL FOR COMMERCIAL TAXES

The Court, at the stage of admission, made the following:

O R D E R: **(Per Hon'ble Sri Justice B.Sudershan Reddy)**

The proceedings, dated 26.10.2004, on the file of the Commercial Tax Officer, Kamareddy, whereunder and whereby directions have been issued to the Sub-Registrar, Kamareddy requesting him not to entertain the document submitted for the registration in respect of the properties, whose details are mentioned in the said

order, is challenged in this writ petition.

The Commercial Tax Officer vide the impugned order requested the first respondent/Sub-Registrar not to entertain the registration of any document in respect of certain properties, unless a clearance certificate is produced for the reason that the sale of the said properties is void under Section 17-A of the Andhra Pradesh General Sales Tax Act, 1957 (for short "the Act"). The power of the Commercial Tax Officer to declare certain transactions void, under Section 17-A of the Act, cannot be disputed. The question is whether the Commercial Tax Officer, in law, is authorized to issue any such request requiring the Sub-Registrar not to entertain the document? No provision in the Act is brought to our notice enabling the Commercial Tax Officer to issue any such direction or request to the Sub-Registrar not to entertain the document itself presented before him for the registration. The Sub-Registrar, in law, is not entitled to make any such enquiry and insist for a clearance certificate before entertaining the document for its registration.

Learned Standing counsel relied upon the judgment of this Court in ***GANJI VENKATESWARA RAO, KOMMU VENKATESWARA RAO*** V s . ***DEPUTY COMMERCIAL TAX OFFICER No.1, SAMARANGAM CHOWK, VIJAYAWADA AND OTHERS***, in which this Court took a view that Section 17-A of the Act contains a statutory declaration that a fraudulent sale, during the pendency of any proceedings, under Act or after completion thereof, would be void. The statutory power conferred upon the authorities specifically to declare the sale transaction void, if it is entered into between the parties to defraud the public revenue, was accordingly upheld. We fail to appreciate as to how the said judgment supports the impugned letter in whatsoever manner. There cannot be any dispute that if the ingredients under Section 17-A of the Act are satisfied, the competent authority is empowered to declare such transaction as void. We are not concerned with such a situation here. The impugned letter requires the Sub-Registrar not to entertain the document. In our considered opinion, there is no provision under the Act under which such direction or request could have been made by the Commercial Tax Officer requiring the Sub-Registrar not to entertain the document.

For the aforesaid reasons, the impugned proceedings dated 26-10-2004 are set aside. The proceedings of the Sub-Registrar, dated 02-11-2004, refusing to entertain the document, are also set aside. The first respondent is directed to receive the document submitted by the 4th petitioner herein for registration and register the same, provided all the conditions for registration of the document are complied with. The 1st respondent shall not refuse to receive the document for its registration as required by the 2nd respondent.

However, we may hasten to add, this order shall not preclude the 2nd respondent to invoke his jurisdiction under Section 17-A of the Act and proceed further in the matter, in accordance with law, if he intends to do so.

The writ petition is accordingly disposed of without any order as to costs.

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B. SUDERSHAN REDDY, J.

Date: 29-11-2004

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T.CH. SURYA RAO, J.

Note: Furnish C.C. by 01-12-2004.

(B/o)

GS/PVKS

To

1 The Sub-Registrar, Kamareddy, Nizamabad District.
2 The Commercial Tax Officer, Kamareddy, Nizamabad District.

3 2CCs to G.P. for Revenue, High Court of A.P., Hyderabad (OUT)

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